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In re:

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NOT FOR PUBLICATION

NOV 10 2005 HAROLD S. MARENUS, CLERK U.S. BKCY. APP. PANEL OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

BAP	No.	CC-05-1018-PMoN

LA 04-17613-MT Bk. No.

Adv. No. LA 04-02089-MT

EDITH CADALIN CAMANZO,

EDITH CADALIN CAMANZO,

Appellant,

Debtor.

TERESIJA SIGMUND,

Appellee.

MEMORANDUM¹

Argued on June 22, 2005 at Pasadena, California Submitted on July 18, 2005

Filed - November 10, 2005

Appeal from the United States Bankruptcy Court for the Central District of California

Honorable Maureen A. Tighe, Bankruptcy Judge, Presiding

Before: PERRIS, MONTALI, and NEWSOME2, Bankruptcy Judges.

This disposition is not appropriate for publication and may not be cited except when relevant under the doctrines of law of the case, claim preclusion or issue preclusion. See 9th Circuit BAP Rule 8013-1.

Hon. Randall J. Newsome, Chief Bankruptcy Judge for the Northern District of California, sitting by designation.

Debtor Edith Camanzo (debtor) appeals from a summary judgment entered against her in favor of Teresija Sigmund (Sigmund) on Sigmund's complaint to declare that a debt owed to her by debtor is nondischargeable under § 523(a)(2)(A).³ The bankruptcy court concluded that the elements of the fraud claim had been established by an earlier state court judgment (the Second Modified Judgment) and therefore that the debt owed by debtor to Sigmund under the Second Modified Judgment is non-dischargeable in this bankruptcy case. We affirm.

FACTS⁴

In 2001, Sigmund and debtor entered into an agreement under which Sigmund would lease from debtor and reside in some residential real property, with the option to purchase. The lease payments were to be credited toward her intended purchase. In January 2002, Sigmund and debtor executed sale escrow instructions and opened an escrow account to complete a sale of the property for \$165,000. A dispute arose in which each party claimed that, between January and August 2002, the other failed to comply with the agreement.

In September 2002, without Sigmund's knowledge and without informing the escrow company, debtor executed and caused to be recorded a quitclaim deed, transferring the property that was the subject of the purchase agreement to Erwin Pardue, as trustee of

Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330.

Neither party provided a statement of facts in their brief. We draw the facts from the bankruptcy court's Memorandum of Decision on Sigmund's Motion for Summary Judgment and other portions of the excerpts of record.

the Erwin Pardue West Coast Family Trust. The recording of this quitclaim deed caused certain federal tax liens to encumber the property which, together with state tax liens, totaled \$258,923.46.

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In November 2002, Sigmund filed a lawsuit in state court (the state court action) against debtor and Pardue, ⁵ alleging a breach of the sale escrow instructions. While that action was pending, Pardue obtained an unlawful detainer judgment and evicted Sigmund from the property.

The next summer, Sigmund filed an amended complaint in the state court action alleging, inter alia, breach of contract, fraud, and specific performance to compel completion of the property sale. The parties participated in a settlement conference with state court Judge Alan B. Haber. As a result of the settlement conference, the parties entered into a Stipulated Judgment, which incorporated Mutual Amended Escrow Instructions. Under the Stipulated Judgment, debtor agreed to specifically perform and complete the sale for a purchase price of \$180,000, which was an increase of \$15,000 over the original sale price. In executing the Mutual Amended Escrow Instructions, Pardue and debtor warranted that:

there are no other liens on the [property] other than the first Quality Loan Deed of Trust Lien, the 1950 Cloverfield Homeowners Association lien and the Property Tax lien, nor will [debtor] incur any new liens on the Property.

Mutual Amended Escrow Instructions at 2, ¶ 4.6

Shortly thereafter, upon reviewing a title report prepared for the sale closing, Sigmund discovered the nearly \$260,000 in tax

⁵ It is not clear when Sigmund learned that the property had been transferred to Pardue.

The Homeowners Association lien totaled approximately \$7,000, and the outstanding Los Angeles County property tax lien about \$5,000.

liens on the property in addition to the liens debtor had disclosed and warranted in the Mutual Amended Escrow Instructions.

Sigmund then filed a motion to enforce the settlement, asking either for an order requiring debtor to provide clear title or, in the alternative, for monetary damages and specific performance.

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Following an evidentiary hearing on the motion to enforce the settlement, Judge Haber found that, while the initial sale was pending, debtor had executed and caused to be recorded the quitclaim deed transferring the property to Pardue as trustee of the Erwin Pardue West Coast Family Trust. Judge Haber found that the property was encumbered by federal and state tax liens of more than \$250,000 against Pardue, and that the transfer from debtor to Pardue "was designed to frustrate and render [it a] virtual impossibility for [Sigmund] to purchase the subject property." Second Modified Judgment at 2.

Judge Haber noted that a "significant issue" for resolution was whether debtor and Pardue were aware of the federal tax liens before the quitclaim deed was recorded in September 2002. Based on Pardue's "lack of credibility," Judge Haber found that debtor and Pardue "were aware of the existence of said tax liens" before they executed the Mutual Amended Escrow Instructions and Stipulated Judgment in August 2003.

Judge Haber concluded that the quitclaim transfer was a fraudulent transfer under California Civil Code § 3439.04. He entered a Second Modified Judgment in which he (1) declared the quitclaim deed null and void; (2) ordered certain encumbrances and assessments (such as the Homeowners Association lien and the Los Angeles County property taxes) paid from debtor's sale proceeds;

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(3) entered judgment to quiet title; (4) ordered debtor to execute all necessary documents to effectuate a sale of the property to Sigmund; and (5) awarded Sigmund \$45,091 in attorneys' fees and \$3,524.19 in costs. Additionally, under the court's "equitable and legal powers under the Uniform Fraudulent Transfer Act to assess monetary damages," the court awarded Sigmund money damages of \$34,381.49 "as a consequence of the intentionally fraudulent conduct" of debtor and Pardue.⁷

A few weeks later, on April 5, 2004, debtor filed this chapter 7 case. Sigmund filed an adversary complaint, seeking a determination that the debt owed by debtor to Sigmund under the Second Modified Judgment is nondischargeable under § 523(a)(2)(A). Sigmund moved for summary judgment, asserting that, under the principles of issue preclusion, 8 the Second Modified Judgment established that the debt is nondischargeable as a matter of law.

The bankruptcy court agreed, and entered judgment in favor of Sigmund. Debtor appeals.

ISSUE

Whether the bankruptcy court erred in applying issue preclusion to determine that the debt is nondischargeable under 523(a)(2)(A).

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The \$34,381.49 damages award was to be set off by a \$16,500 judgment obtained by debtor and Pardue against Sigmund in the unlawful detainer action, provided they executed an Acknowledgment of Full Satisfaction of that judgment. In violation of the Second Modified Judgment, debtor refused to execute the necessary documents to complete the sale. Ultimately, an official in the Superior Court Clerk's Office executed such documents on behalf of debtor to complete the sale to Sigmund.

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The familiar phrases collateral estoppel and res judicata are expressed in modern terminology as, respectively, issue preclusion and claim preclusion. See In re Paine, 283 B.R. 33, 38 (9th Cir. BAP 2002). In this Memorandum we use the term issue preclusion to refer to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided.

STANDARD OF REVIEW

We review a bankruptcy court's ruling on a motion for summary judgment de novo. <u>In re Baird</u>, 114 B.R. 198, 201 (9th Cir. BAP 1990). In reviewing a summary judgment order, our task is the same as a trial court: Viewing the evidence in a light most favorable to the non-moving party, we determine whether the bankruptcy court correctly found that there was no genuine issue of material fact and that the moving party was entitled to judgment as a matter of law. <u>Id.</u>; <u>In re De Laurentiis Entertainment Group Inc.</u>, 963 F.2d 1269, 1271-72 (9th Cir. 1992). We also review de novo the bankruptcy court's application of issue preclusion. <u>In re Tobin</u>, 258 B.R. 199, 202 (9th Cir. BAP 2001).

DISCUSSION

1. Dischargeability under § 523(a)(2)(A)

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Section 523(a) (2) (A) excepts from discharge any debt for money, property, services or credit obtained by debtor's "false pretenses, a false representation, or actual fraud." In re Jacks, 266 B.R. 728, 733 (9th Cir. BAP 2001). To prevail on a claim under \$ 523(a) (2) (A), a creditor must establish, by a preponderance of the evidence, (1) a misrepresentation, fraudulent omission or deceptive conduct by the debtor; (2) knowledge by the debtor of the falsity or deceptiveness of his statement or conduct; (3) an intent to deceive; (4) justifiable reliance by the creditor on the debtor's statement or conduct; and (5) damage to the creditor proximately caused by his reliance on the debtor's statement or conduct. In re Slyman, 234 F.3d 1081, 1085 (9th Cir. 2000). The elements of \$ 523(a) (2) (A) mirror the elements of common law fraud,

and match those for actual fraud pursuant to California law. See Tobin, 258 B.R. at 203. The bankruptcy court concluded that the Second Modified Judgment established each of those elements, and that issue preclusion applied to establish nondischargeability as a matter of law.

2. Issue preclusion

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Issue preclusion applies in bankruptcy dischargeability proceedings. <u>Grogan v. Garner</u>, 498 U.S. 279, 284-285 (1991); <u>In re</u> <u>Sasson</u>, 424 F.3d 864, 872 (9th Cir. 2005) (the doctrines of preclusion play an important part in dischargeability proceedings by preventing the relitigation of factual and legal issues already determined by other courts). Application of the issue preclusion doctrine is within the broad discretion of the trial court. Gottheiner, 703 F.2d 1136, 1139 (9th Cir. 1983). The burden of proof is on the party seeking to assert issue preclusion to "introduce a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action." 258 B.R. at 202-03. In determining the preclusive effect of a state court judgment, federal courts must apply the issue preclusion law of the state in which the judgment was entered. In re Bugna, 33 F.3d 1054, 1057 (9th Cir. 1994); <u>In re Nourbakhsh</u>, 67 F.3d 798, 800 (9th Cir. 1995).

Under California law, issue preclusion bars relitigation of an issue "argued and decided" in an earlier proceeding when five requirements are met: (1) the issue decided in the prior action is

We disagree with debtor's assertion at oral argument that receipt of a benefit obtained by fraud is an additional element under § 523(a)(2)(A). See Muegler v. Bening, 413 F.3d 980, 983-84 (9th Cir. 2005) (receipt of benefit obtained by the debtor's fraud is not additional element for § 523(a)(2)(A) dischargeability exception).

identical to the issue presented in the second action; (2) the issue was actually litigated; (3) its determination was necessary in the prior action; (4) there was a final judgment on the merits; and (5) the party against whom estoppel is sought was a party, or was in privity with a party, to the prior action. Lucido v.

Superior Court, 51 Cal.3d 335, 341 (1990); In re Baldwin, 249 F.3d 912, 917-18 (9th Cir. 2001). In addition to meeting the threshold requirements, California law allows for the application of issue preclusion only if doing so furthers the underlying public policies of preservation of the integrity of the judicial system, the promotion of judicial economy, and the protection of litigants from harassment by vexatious litigation. Lucido, 51 Cal.3d at 342-43; Baldwin, 249 F.3d at 919.

We agree with the bankruptcy court, and the parties do not dispute, that the last two requirements for application of issue preclusion are satisfied; the Second Modified Judgment is a final judgment on the merits, and debtor, the party against whom issue preclusion is sought, was a party to the motion that resulted in the judgment.

We also conclude that the state court decided issues that are identical to those arising under § 523(a)(2)(A), that fraud was actually litigated, and that the court's determination of fraud was necessary to its decision.

The issue before the state court was whether to enforce the settlement agreement, which the parties had entered into after debtor's conduct had resulted in the attachment of liens to the property that made performance of the settlement agreement impossible. The court concluded that debtor had known, when she

entered into the settlement agreement, that there were tax liens attached to the property that made her performance of the settlement agreement impossible.

The state court also found another instance of fraud: that the original quitclaim transfer from debtor to Pardue was a fraudulent transfer. The court said that "the execution of and the recordation of the September 11 Quitclaim Deed from defendant Camanzo to defendant Pardue was designed to frustrate and render [it a] virtual impossibility for plaintiff to purchase the subject property." Second Modified Judgment at Finding (3). The court then found that the quitclaim deed was a fraudulent transfer under California's version of the Uniform Fraudulent Transfer Act, Cal. Civ. Code § 3439.04(a) and (b), and declared the quitclaim deed null and void. Id. at Judgment ¶ 2.

In addition, the court awarded monetary damages for the fraudulent transfer. <u>Id.</u> at Judgment \P 3. The court said that, "as a consequence of the intentionally fraudulent conduct of the defendants, the Court orders that Plaintiff is entitled to monetary damages in the amount of \$34,381.49" <u>Id.</u> at Judgment \P 5.

A transfer may be fraudulent because of either actual or constructive fraud. 10 Actual fraud is required before a debt arising from a fraudulent transfer will be nondischargeable.

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California's fraudulent transfer statute provides that a transfer is fraudulent as to a creditor either if the transfer was made "[w]ith actual intent to hinder, delay, or defraud[,]" or if it was made "[w]ithout receiving a reasonably equivalent value in exchange for the transfer[,]" and the debtor either "[w]as engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction[,]" or "[i]ntended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due." Cal. Civil Code § 3439.04(a)(1), (2). The first type of fraudulent transfer involves actual fraud; the second does not.

"Actual fraud, by definition, consists of any deceit, artifice, trick, or design involving direct and active operation of the mind, used to circumvent and cheat another — something said, done or omitted with the design of perpetrating what is known to be a cheat or deception." 4 Lawrence P. King, Collier on Bankruptcy
¶ 523.08[1][e] (15th ed. Rev. 1998).

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The state court's findings in this case support application of issue preclusion, because the court found that the fraudulent transfer was based on actual fraud, and awarded damages for that fraud in addition to setting aside the transfer. The state court judgment established that debtor's transfer of the property to Pardue in 2002 was done with the intent to frustrate and make it impossible for Sigmund to complete her purchase of the property. Debtor's transfer of the property to Pardue with the intent of defeating the purchase agreement was actual fraud.

The state court judgment also established that debtor knew of the deceptiveness of the conduct; the court found that the quitclaim transfer was designed to frustrate the sale. The state court judgment established the intent to deceive by that same finding.

Debtor argues that the state court did not find either justifiable reliance or damage as a result of the fraud. However, debtor focuses on the second fraud, that which occurred when debtor entered into the settlement agreement with Sigmund in 2003, knowing at the time that she could not perform. Although the state court did find that debtor knew about the tax liens when she entered into the settlement agreement, it was not that conduct that the court found justified damages. Instead, the state court found that the

earlier transfer by quitclaim deed was fraudulent, and that Sigmund had suffered damages of \$34,381.49 "as a consequence of the intentionally fraudulent conduct of the defendants" Second Modified Judgment at Judgment ¶ 5.A. Because the court had said earlier in the judgment that damages were being awarded under the fraudulent transfer statute, the intentionally fraudulent conduct to which the court referred had to relate to the intentionally fraudulent conduct of debtor in quitclaiming the property when she knew that action would result in the attachment of a huge tax lien to the property. Those findings establish that Sigmund justifiably relied on the fraud and incurred damages as a result of it.

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Debtor's focus on the fraud involved in her signing of the settlement agreement is understandable; the bankruptcy court did the same thing. There were, however, two separate frauds here: the first in 2002 when debtor transferred the property to Pardue with the intent to make it impossible for debtor to complete the agreed sale to Sigmund, and the second in 2003 when she signed a settlement agreement warranting that there were no liens other than the ones listed, when in fact she knew that there were liens of more than \$250,000 on the property. The state court did not make any findings that there was damage to debtor arising from the second fraud, and the bankruptcy court therefore erred in relying on that fraud in granting summary judgment. We can affirm, however, for any reason supported by the record. In re Prize Frize, Inc., 150 B.R. 456, 461 n.11 (9th Cir. BAP 1993), aff'd, 32 F.3d 426 (9th Cir. 1994); <u>Kimes v. Stone</u>, 84 F.3d 1121, 1126 (9th Cir. 1996). The Second Modified Judgment establishes that the debt that is the subject of the dischargeability complaint is based on

an award of damages arising from the first fraud, which occurred when debtor fraudulently transferred the property by quitclaim deed to Pardue. Because the fraudulent transfer was based on actual fraud, and the court awarded damages based on that fraud, the state court judgment established the elements of nondischargeable fraud under \S 523(a)(2)(A).

Debtor does not argue that the policy reasons for applying issue preclusion (preservation of integrity of judicial system, judicial economy, and protection from vexatious litigation) do not apply here. We conclude that, based on the state court's findings of actual fraud in the transfer of the property to Pardue in 2002, with the intent to defeat the sale to Sigmund, which transfer caused Sigmund damage, the bankruptcy court did not err in entering summary judgment for Sigmund.

CONCLUSION

The bankruptcy court was correct in granting Sigmund summary judgment, although for the wrong reasons. Therefore, we AFFIRM.